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Personal Glimpses of an Honest Judge

*Fred J. Cassibry**

A judge must have a high tolerance of views he does not share. This requires a great deal of intellectual humility. His high seat and black robe must not lead him to an exalted view of himself. Behind the bench and beneath the robe must beat a humble and compassionate heart. The honest judge must, in a word, have character. He aspires, even if he never reaches, to the goal described by an ancient Rabbi who said "To every judge who judges truly even for an hour the scripture reckons as if he had been a partner with God in the work of creation."¹

I had a fairly busy docket in Section C of the Civil District Court for the Parish of Orleans, State of Louisiana, in New Orleans one day in some month between late 1965 and early 1966. While we handled important cases from time-to-time, many were routine, actually offering little challenge to a seasoned trial judge of at least four or five years such as I. But I had been told that one Alvin B. Rubin, a distinguished lawyer from Baton Rouge who was being considered for a federal judgeship, was going to argue a motion in my court. My curiosity about him was more than ordinarily aroused because he had not only established a reputation as having a superb intellect, he was reputed to be an outstanding lawyer. Besides all that, it was reported to me that he was unbeatable in court and that he wrote unchallengeable briefs and treatises on the law and that they were cited by distinguished jurists and scholars. I was advised, too, offhandedly, that he was United States Senator Russell B. Long's lawyer and taught in the Law School at Louisiana State University. Painfully remembering my own academic record and that few could say the same thing about my accomplishments in the law, I awaited the arrival of this legal tiger with more than a little jealousy and envy.

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1. Quoted by Albert Fraenkel, a close friend of Judge Rubin's, at a service for Judge Rubin in Baton Rouge, Louisiana.

His appearance before me would not have been so important at the time had I not developed a strong urge to get that same Senator Russell B. Long to consider submitting my name to President Lyndon B. Johnson for appointment to the Eastern District of Louisiana Court. The Congress had created five or six new judgeships in 1965-66 and many lawyers, I among them, felt the time was ripe to obtain one of those positions.

As I remember it, since it was "Rule" day in Civil District Court, the courtroom was a little more crowded that morning than usual, but certainly not because anyone wanted to see or hear Rubin or me. Several lawyers were standing at the bar in front of me. I had just finished hearing one group and was prepared for the next case. Then I heard that voice. Very low and dulcet, actually melodious, "Your Honor, I am Alvin Rubin." It startled me because the man standing in front of me did not look or sound like the man I had pictured in my mind. This man was tall, raw-boned and trim, had on a well-fitted suit and, while I could not now be sure, I think he had on a snappy bow tie. I expected a rather dapper-looking fellow with a Harvard accent. He was neat and clean shaven, but he was dark complected, because, I later found out, he often jogged and played tennis. His hair was heavy and black and was neatly parted on the side. He looked grim and determined, and when I regained my composure after seeing him so suddenly, I stared at his face and then his eyes. They were the most intense pair of bluish-steel grey eyes that I had ever seen. I shall never forget my first look at them, and I could not know then that there would be hundreds of unprepared lawyers who appeared before him who would also never forget them. Ironically, however, those menacing eyes kept him out of the Navy when he tried to enlist. He did enlist in the Army and stayed four years and was discharged a captain. I learned from a reliable source that he passed the Navy eye test the first time he took it by memorizing the eye chart. The examiner sent him home to treat a minor infection and when he returned, they had changed the chart.

In that soft, low voice that day in the Civil District Court, he convinced me in an instant of the merits in his client's cause. My recollection now is that he and I did not meet and talk then about either of our ambitions to be a federal judge. One thing I do remember vividly: he looked like a judge, he talked like a judge, and I do remember distinctly concluding that if all they said about him was true, he would be a good judge. My prediction was a gross underestimation. He became an outstanding and brilliant jurist.

He and I and two others were appointed near the same date in November, 1966.² While we were all sworn in on different dates, our

2. Judge Frederick J. R. Heebe was appointed approximately six months before us and Judge James A. Comiskey was appointed a few months after us.

official date of appointment was the same date. This meant that the seniority pecking order of those four would be according to age. He looked at me one day after we had been judges for a while and said, "Fred, do you really believe that when the time comes that you ought to be chief judge over me merely because you are older than I am?" I do not remember what my answer was, but it was not the last time that he asked me a question that I could not answer.

After World War II, the cases in federal courts all over the country escalated dramatically, particularly in the Eastern District of Louisiana and the Fifth Circuit Court of Appeals. Congress and the judges soon learned that more judges was not the answer; more efficient disposition of cases, plus more judges, was a better solution. The four or five judges then in office worked long hours, efficiently, and hard, but were overwhelmed with thousands of cases then pending. These cases principally arose out of the extensive search for oil, gas, and sulphur in the Gulf of Mexico off the Louisiana and Texas coasts. When the six new judges were finally all appointed, the court moved out of the old U.S. Post Office Building in New Orleans³ to "temporary" quarters in a large run-down, four-story building in the old Vieux Carre which had once accommodated the Louisiana Supreme Court and all other civil courts in the Parish of Orleans. It had been almost totally vacant for years before we arrived, and while it was dilapidated, it had been built out of marble and had a certain quiet dignity. First, there was not enough room for real chambers, just rooms connected by small doors. The courtrooms were small but adequate. Our chambers were a whole city block from the courtroom so that every day we were exposed to jurors, witnesses, spectators, and lawyers, many of whom at one time or another wanted a private word with the judge in the hallway. There was little privacy and a severe lack of space, but Alvin did not complain. He never did complain much about anything, not even his pay, which was deplorable for years, and was one of my favorite gripes.

Right after we were sworn in, we were asked to attend a one-week school sponsored by the Administrative Office of the U.S. Courts, the administrative arm of the federal courts, to learn procedure and otherwise how to be an effective judge. Our professors were fellow judges with general experience, and some had acquired special expertise in important areas of the law. We were also taught by notable law professors. Before he attended the session, Alvin probably knew as much or more than many of the teachers because within a short time, he was formally promoted to the faculty and continued to serve in that capacity for years.

3. Since the old New Orleans Main Post Office Building was a structural and architectural gem, the government was induced to convert it from a post office, district chambers, and courtrooms to chambers and courtrooms to accommodate the U.S. Fifth Circuit Court of Appeals. It now ranks at the top in beauty and dignity.

At the school for new judges, we were first reminded of Rule 1 of the Federal Rules of Civil Procedure, which declared in part that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." No one ever had any doubt that Alvin Rubin would construe the Rules to decide a case justly, but the authors of Rule 1 could not have known how strictly Alvin Rubin would construe them to attain a "speedy and inexpensive" disposition of the cases before him. Alvin, of course, knew about the existence of the Rules as a practicing attorney, but before he became a judge, he was probably not fully aware of the opportunity they afforded to change the way lawyers practiced in the federal courts. He was probably not ready to pursue the literal mandate of the Rules as forcefully as he did until he heard the dean of the judges school, a retired and brilliant and crusty former chief judge of the U.S. Tenth Circuit Court of Appeals,⁴ say at the outset: "Before the case is filed in court, it belongs to the lawyers. After it is filed, it belongs to the court." We were bluntly told that if we left it to the lawyers to advance the cases, they would never be tried. If Alvin did not know this already, he certainly accepted it as a fact and proceeded to enforce it with dispatch. He became convinced that the cases would not otherwise be tried speedily nor inexpensively.

To put in motion this mandate, Alvin set up the machinery in his office to construe the Rules in such a way that a speedy and inexpensive disposition of each case was assured. Those of you who practiced before him in the early years have a vivid recollection of the vicissitudes of practice before that new federal judge. He declared martial law in his court and warned that all who did not explicitly follow the Rules in procedural matters would regret it. Lawyers will painfully remember the cost of being ill-prepared and doing slothful work before Alvin Rubin. To him, such conduct was inexcusable.

While Alvin could be firm in his criticism of unprepared attorneys, he was not cruel. He never ridiculed a lawyer or talked down to him, particularly in front of the lawyer's client. He used his deep bass voice to call the miscreant's attention to what the judge and the Rules expected him to do and where he had failed. Alvin enunciated clearly, slowly, and calmly. He never shouted or raised his voice. However, when he hesitated to speak and narrowed his eyes, it was time to listen carefully because he was about to say something that would profoundly alter the status quo. When he finally spoke, it was as if it were recorded and transcribed; it would be coherent and clear as though it had been written beforehand and edited. When Justice Hugo Black was the Fifth Circuit's supervisory Justice, he always came to the Annual Fifth Circuit Conference, was put on the program, and spoke to us for thirty minutes.

4. Chief Judge Alfred P. Murrah.

His talk was extemporaneous, and Alvin and I marveled at his use of the language and the clarity of his thoughts. Many clerks, judges, lawyers and lay persons, and I, think that Alvin was similarly skilled.

In those early years, lawyers said that he seemed to expect every attorney to be as erudite, intelligent and learned as he was, and many dreaded to go into his court. This feeling of many lawyers got back to him. He was concerned and perplexed, and we talked about it often.

For a hundred years, many lawyers in New Orleans had practiced in a casual and lackadaisical manner. The attitude of many judges in those days was that if the lawyer did not want his case tried, he would let it sit. However, beginning in the 1950s and early 1960s, that situation began to change. Cases began to pile up as District Judges Skelly Wright, Robert A. Ainsworth, Jr., Herbert W. Cristenberry, E. Gordon West, and Frank B. Ellis faced the enormous task of moving thousands of cases. They were simply overwhelmed. The six new judges who arrived in 1966-67 were convinced beyond any doubt that a new approach was needed if the cases were to be disposed of quickly and inexpensively.

When we moved into the old courthouse in the French Quarter, Alvin's chambers and my chambers were adjacent with a door between. This door remained open for nine years. Then we moved from our "temporary" quarters to a new courthouse ten blocks away. When construction started, Alvin and I requested of the new building contractor and U.S. General Services Administration that our chambers be constructed next to one another and that a door be cut between them. They acceded to our request. We saw one another many times a month after 1966 until 1977 when Alvin was appointed to the Fifth Circuit.

Needless to say, these open doors between our chambers in both buildings were priceless to my staff and me. I believe that Alvin was also pleased with the arrangement because our friendship quickly became close and endured.

One day in the early turbulent years when we were trying to put a bridle on the lawyers, he suggested to me that I should get him a bottle of "patience pills" to help him control the firmness with which he was handling many recalcitrant lawyers who refused to accept change easily and follow the Rules. I agreed to do it, but suggested in return that he get me a bottle of "intellect pills." I do not remember whether we carried out this exchange, but if we did, the "patience" pills were far more effective than the "intellect" ones. A close lawyer friend of Alvin's remembers that he saw three-by-five cards with PATIENCE printed on them in three easily seen places on his bench.

Alvin's intensity grew out of a grim determination that he was going to destroy, at least in his court, the casual manner in which lawyers were moving their cases. Alvin and other judges were merely reacting to a general refusal among the lawyers to change their old ways. All the judges soon began to push hard, and Alvin led the pack. He became

so efficient and effective that many of his colleagues, including myself, borrowed and used many of his finely honed orders. His procedures were so superior, many were copied and used throughout the federal judiciary.

The result of all this was a generally unhappy bar. I felt that lawyers were particularly unhappy with Judge Rubin because he pushed harder than many of us and would accept no excuses. Most of his clerks remembered him as a "no nonsense" judge.

After a few years, however, the New Orleans Bar Association or the Louisiana Bar Association polled their members to see what they thought of the local federal judges. Surprisingly enough to many, if you called this a popularity poll, Alvin won it hands down. He was first in every category: intellect, case handling, preparation, and speedy disposition of cases. The lawyers obviously felt that despite Alvin's occasional sternness, he was always efficient, read their briefs, let them try their cases without undue interference, and, above all, he was scrupulously fair and impartial.

I did not find Alvin political in any sense of the word. He had friends who were involved in politics, but he did not seem particularly interested in that subject. During the time he was judge, as far as I know, he eliminated politics from his mind, even to the extent of not revealing his choice in any political contests. He would not have done so even if the Code of Judicial Ethics had not strictly forbidden judges from taking public positions on political issues. He felt that he should not make even an off-hand remark about the pluses or minuses of a political cause or person. He was uncomfortable using terms such as liberal or conservative, and consciously avoided labelling others, particularly judges, in that fashion. He believed that after a lawyer became a judge, he should abandon treating matters that came before him as issues that could be decided on philosophical or political beliefs. The law was the law, and even the thought that the case should be decided on the basis of the judge's philosophical or political beliefs was abhorrent.

Alvin undoubtedly was registered as a democrat, but I never knew how he voted in any particular political contest. As far as issues of civil rights were concerned, he was a progressive thinker. The ACLU thought so by honoring him. Nevertheless, Alvin undoubtedly approached the subject of civil rights from the perspective of what he thought the law mandated. In any event, those who knew him well agree that he was deeply compassionate. He was unbiased and not prejudiced in any way against persons because of their racial, ethnic or religious beliefs. Having worked with him so closely, there was never any doubt in my mind that he was always conscious of the needs of the poor and underprivileged.

Among the judges, lawyers, former law clerks and laymen with whom I consulted and corresponded in preparing this article, many lament the fact that Alvin did not get appointed to the United States Supreme Court. His outstanding reputation fairly cried out for his appointment, but it was not to be. Perhaps the very fact that he did not play politics was partly responsible for his missing the chance. Certainly President Carter's loss for re-election was also a cause. Russell Long declared that when Alvin was being considered for valedictorian of his law class over an opponent (this was the custom in the law school at the time), he had to be Alvin's campaign manager to assure the win. Even then, I could picture Alvin's distaste for this kind of "politicking."

I think one of his colleagues put it best:

Alvin Rubin was born to be a judge—a great judge. His intellect, scholarship and judicial leadership place him in a select group. In recent years some of this small group graced the United States Supreme Court: Holmes, Brandeis and Cardozo. Two others, with whom he would have melded, should have been on the court but for an accident of politics, as in Alvin's case: Learned Hand and Henry Friendly. I do not speak these words lightly. These judges would have welcomed him on equal intellectual terms and as a kindred spirit.

When Alvin was promoted to the Fifth Circuit, I and his dear friend, U.S. District Judge Tom Stagg, suddenly realized that our old colleague and mentor would soon be grading our papers. During the next two or three years, he did grade mine, and with a sharp pencil! For a time it irritated me enough that I resolved to casually call it to his attention the next time I saw him at a party or meeting. On that next occasion, I suggested that I simply could not be wrong so often and that if he did not ease his scrutiny of my opinions, my reversal percentage would surely rise above the norm. Alvin simply smiled and said, "Fred, you're just going to have to try harder." The fact of the matter is that I did try harder, and in fact it seemed that I was reversed less often. I later told him that I had written my opinions so tightly that even he could not reverse me. All of this, of course, was said with tongue-in-cheek, and he enjoyed it immensely.

Alvin and his work were well known to all the Justices on the United States Supreme Court. He had written many opinions, both on the majority side and in dissent, that commanded the high Court's respect. The Justices acknowledged the import of his holdings in many, many cases.

At Alvin's memorial service on June 15, 1991, one of Alvin's former colleagues on the U.S. District Court told a story which exemplifies the high esteem in which Alvin was held by the Justices of the Supreme Court. Alvin dissented from an *en banc* decision in *Edmonson v. Leesville Concrete*. As this colleague recounted:

Alvin . . . chewed up the majority for not being able to see the logic of *Batson* applying not alone to criminal cases but as well to civil cases, where you can't throw a person off the jury because he is either black or white. Then you go read Mr. Justice Kennedy's majority opinion for the Supreme Court in *Edmonson vs. Leesville Concrete* and you will find, wonder of wonders, there sits Alvin Rubin on the pages of that opinion as well.

Mr. Justice Kennedy on June 11, 1991, prepared a letter to Alvin.

Dear Al, I could not tell you when we spoke in San Francisco, but I can tell you now how much I admired your dissenting opinion in *Edmonson vs. Leesville Concrete*.

But [Justice Kennedy] doesn't send the letter because, before he could send it, he got word that Alvin had died. So he wrote to Janice [Alvin's wife] and sent her a copy of the unsigned letter saying:

I thought that the enclosed letter might be of some historical interest to you. I have written an opinion for our court which we issued on June 3, 1991, adopting the position Al had taken in dissent. It is my policy not to communicate with judges even after an opinion has been issued, but I have been thinking about Al and knowing how courageous he was in the face of his illness, so today I dictated the enclosed letter. It was on my desk for signature when my telephone call came.

There was never any doubt that Alvin loved LSU. He knew that I was a Tulane graduate and had played football there. However, when LSU won games over Tulane, which was often, he was never loud, jubilant, or insulting about it like some of our LSU colleagues on the bench in New Orleans. Typical of him, he merely smiled and congratulated me in 1973 when the Tulane football team beat LSU for the first time in twenty-five years. The congratulations were not hearty, but I thought sincere, yet I could not be sure. How could any LSU fan be sincere when talking about losing to Tulane, even Alvin Rubin?

His secretaries spoke of his hard work and the hundreds of cassettes he regularly used, some three or four of which he handed to them every Monday morning. One noted, however, that there was always "something in the background competing for tape space." "He dictated while he listened to a symphony or opera on PBS; and while he baby-sat his grandchildren. The recorder took every air flight with him, and because of the confidentiality of his work, the flight attendant's instructions were frequently more discernible than the Judge's dictations." One secretary recalled that once she arrived at work and the elevator at the courthouse was not operating due to a power failure, and since Judge Rubin's office was on the twentieth floor, she returned home. When

she finally was able to get to the office, Alvin had been there since the office had opened. He had climbed twenty flights of stairs to his office. At the time, he was in his mid-sixties.

The secretary further said, "His faith in the U.S. Mail was unshakable—misplaced, but unshakable. Wherever he went, a steady stream of blue U.S. mail pouches and . . . a suitcase full of work in progress [followed him]. Layovers were never a problem for him—he simply set up his mini-office in some out-of-the-way part of the terminal and conducted business as usual."

One secretary summed it up by telling me that when she left her employment with Judge Rubin, she decided not to seek another position because "when you've had the best, there's no place to go but down."

One of Alvin's good friends related a short story about Alvin at the memorial service that helps demonstrate the side of his character that promoted humorous songs, riddles and poems, for which Alvin and Janice, his wife of forty-five years, became famous, all aimed at Alvin and his friends. This friend also talked about Alvin's sense of humor, his smile, his laughs, his jokes.

Alvin had served as President of this Congregation (Temple B'nai Israel). I asked if there were any suggestions he might offer from that experience. In his thoughtful way he considered the question and replied, "Yes, when you sit on the pulpit, always wear knee length socks."

Just last Thanksgiving Alvin wrote, "We have much to be thankful for. Life has its vicissitudes" [an expression he frequently used] "but also its blessings, including sunshine, good friends and clipping services."

Clipping services. Alvin was an inveterate clipper of newspapers and journals, and he knew precisely what would interest me.

In 1985 I was ready to retire and practice law but was deterred because if I did so, I would lose my federal life insurance, which was considerable. In 1987 Congress changed the law to permit a retiring judge to retain his insurance. I happily wrote Alvin to give him the good news. I received a letter from him in a few days which read: "Hope you will change your insurance and live forever. The Government needs the premiums."

One fellow judge remembered that in 1977 Alvin had presented a program at the annual meeting of the National Academy of Arbitration "which was an intellectual tour de force, but was also unbelievably hilarious. I am sure that in the federal judiciary he had no peer as a raconteur and creator and singer of impertinent lyrics to well known tunes."

Alvin and Janice loved to write those limericks or jingles which they used on special occasions with students, clerks and friends, a practice that began, I think, soon after they were married. As we have noted,

he usually recited or sang them to the tune of some old, well-known song. In all candor, Alvin, in my opinion, did not sing well, and he was often totally off key. Or it may have been that I did not know good singing when I heard it. In our early years, one judge's wife,⁵ who was an excellent piano player, played the piano after all the parties we attended at the judicial conferences. She played and the judges and their wives sang, often led by Alvin. He spiced up any occasion—good-bye parties, birthdays, anniversaries, and so forth—with his wit and humor. Many of his clerks could beat his singing, and some clerks, not to be outdone, occasionally waxed poetic themselves with Judge Rubin subject material.⁶

Judge Rubin was not only the stern judge, the strict disciplinarian, and the firm and fiery lecturer. In the memorial held for Alvin shortly

5. Mrs. William A. Boodle, the wife of U.S. District Judge William A. Boodle, Chief Judge of the Middle District of Georgia.

6.

How We've Been

(Tune: Hello, Mother; Hello, Father:
A Letter From Camp, by Sherman-Busch)
No more casebooks—no more schoolin'.
Now we work for—Alvin Rubin.
For three months now—we've been clerking.
Let us tell you how Judge Rubin has been doing.
At the Bocage—he serves aces;
Samples fine wine—by the cases.
He eats legumes—with a passion;
With him zucchini never will go out of fashion.
Louisiana—they sell pardons;
But Judge Rubin—just writes run-ons.
With his braces—and his bow tie,
He's the best dressed judge you'll find in all the country.
Tardy waiters—make him real mad;
He's a tiger—an LSU grad.
Dictates memos—in his auto;
Even in Aspen he always worked hard.
From the airport—in Boston, Mass.,
Or when fishin'—for Gulf bass,
He might call in—'bout bench memos;
He stays close to us no matter where he goes.
May camellias—grow in your garden,
May the good life—never harden;
May you continue—to love justice.
Our year with you is one we'll always miss.

Good Judge Rubin

(Tune: Ol' Man River, by Jerome (David) Kern)
Judge Rubin works by the Mississippi,
He even works while his hired help plays,
Readin' those briefs from the dawn to sunset,

after he passed away, several distinguished guests reminded everyone of a side of Alvin that those of us who knew him well will never forget.

For example, few people knew that Alvin loved gardening. Alvin's home in New Orleans was on Walnut Street, and his good friend Congresswoman Lindy Boggs' home was in the French Quarter. Both had splendid gardens. Congresswoman Boggs recalls that:

[T]here was a day when he [Judge Tom Stagg] and Alvin, not knowing that I was at home, came by to tend my garden. Alvin had recruited Tom in this effort. I was in a meeting up on my upstairs porch with a group of people who had come to see me about a very serious piece of legislation, and Alvin did not know I was at home. They were out working very hard, he and Tom, planting some lovely plants, all in bloom for my enjoyment, and these people kept looking out and saying, "You know, there are some people down in your garden." And I said, "Yes, I know that, they're very busy, let them finish their job." First thing you know, one of them said to me, "You know, one of those people looks like Judge Rubin." And I said, "Could be." Finally they said, "Well, we do believe that may be Judge Rubin." I said, "Oh well, there are a couple of federal judges down there, but they come all the time."

When they had completed their work, I knocked on the window and they came up to meet the people and the people were very impressed with my gardeners.

Gettin' no rest 'til the judgment day.
Lawyers don't dare make Judge Rubin frown,
Get the facts and law in their heads;
Prepare for questions they've come to dread,
'Cause if they don't their contingent fee's dead.
Law students come to the Mississippi
Hopin' to learn from the tall Judge Boss
Show them the way to enlightened thinking,
Let them swords with Higginbotham cross.
Our Judge Rubin, our good Judge Rubin,
There's no use bluffin', he don't miss nothin',
He just keeps rulin', he just keeps shapin' the law.
Drives Jeannette and Mary crazy, 'cause his longhand's rotten;
And though the case names he's soon forgotten,
Our good Judge Rubin he keeps improvin' the law.
All us clerks, we sweat and strain,
Our minds are packed and racked with pain.
"Check that cite!" "Write that page!"
"Gotta get it right in this conservative age. . ."
And if by chance the court keeps changin'
The bench gets filled with clones of Reagan,
Our good Judge Rubin, He'll just keep dissentin' alone.

I think Alvin loved teaching much more than he did judging. Deciding cases was an exciting job, but challenging people to reason and explore and solve problems was his favorite pastime. His record shows that he not only taught at LSU, but also temporarily at other universities; he was guest distinguished lecturer at many universities; he wrote innumerable articles on complex legal problems; Alvin chaired innumerable committees in bar associations and judicial conferences, and he greatly enhanced the quality of work of these projects through his ideas and suggestions; he was on a first name basis with innumerable distinguished lawyers, law school deans, and professors from all over the United States. The recitation in his resume of the work he did during his career is awesome and overwhelming.⁷ One wonders how he ever had time to be a judge. His leadership and membership in charitable organizations, including his work in establishing organizations to provide legal assistance to the poor and underprivileged, is noteworthy.

"Professor" Alvin Rubin never stopped teaching. He loved to present legal problems to individuals and groups anywhere he could assemble them, even at the dinner table. It did not matter in what place or context the contests were initiated. Clusters of law clerks were his favorite groups for these exercises, but he rang the school bell on some groups of people who had innocently gathered together to loaf, drink, tell jokes, gossip or engage in bull sessions and who were not prepared to tax their brains too much. Suddenly, and without warning, the deep sonorous voice would slap them to attention and pose a legal or ethical riddle. Those penetrating eyes and narrowed lids caused everyone to pay attention and participate. His questions were propounded in such a way that everyone had a chance to participate. I always felt that he had the answer and would give it to us at the end. He never did. By constantly changing the facts, he would eventually bring everyone to their mental knees. When at the end he only smiled and did not provide an answer, I would slink off and sulk, knowing for sure that he had graded me and that I had flunked.

Alvin taught a class at LSU called *Negotiation*, which he undoubtedly created and organized. When Alvin practiced law, he was considered especially expert in labor law and taxation. His experiences as a mediator or arbitrator undoubtedly induced him to create this course. While he was a district court judge and after he became a circuit judge, he was often asked by district judges to help them compromise an especially difficult case they were about to try or were in the process of trying. In Alvin's class, he taught the tactics and strategy that could be used to negotiate the settlement of a problem between two or among many contestants. He promoted fierce competition which simply required eve-

7. Resume.

ryone to think and contribute. It was probably his favorite class because he could take twenty-eight or so young law students and put them through an hour or more of pure joy for him and, in many instances, pure hell for them. The purpose of the course was to teach them to negotiate, to bargain, to solve problems, to induce them to think. They could solve problems created by competing interests. He provided the facts and from time to time suggested what the law governing the problems might be.

In appreciation for his teaching efforts, Alvin was awarded an honorary LL.D. degree by Louisiana State University and Loyola University of the South in 1990.⁸

It was certainly notable that in 1963 Alvin and Professor Henry George McMahan of LSU, through the Louisiana Law Institute, wrote volumes 10, 11, and 12 of the Louisiana Code of Civil Procedure. The 1992 Pocket Part credits Alvin B. Rubin, Professor Howard W. L'Enfant, Michael H. Rubin, and David S. Rubin for its preparation. Alvin and Janice wrote one of the most valuable books for the bar at large, the *Louisiana Trust Handbook*.

8. *Resolution recommending award of honorary LL.D. degree to Alvin Rubin.*

WHEREAS, while a student in this Law School, Judge Alvin B. Rubin served as Editor in Chief of the Louisiana Law Review, graduated as Valedictorian of his law class and member of The Order of the Coif, and ever since has contributed to the betterment of mankind, the expansion of learning, and the development of a just society;

WHEREAS, for the last forty-three years Judge Rubin has served continuously as a most valuable and highly esteemed law teacher at this institution, longer in fact than any other teacher in its history, and for more than one half its entire existence as a law school;

WHEREAS, although choosing to serve as a member of the part-time faculty only, in addition to devoting his great talents to the development and teaching of his individual courses and creatively developing new courses, he took a keen interest in the broader role of the law school in training the judges, legislators and other leaders of the future;

WHEREAS, by virtue of his magnificent intellect, his prodigious powers of analysis, his extraordinarily lucid style of exposition and persuasion, his acute sense of justice, his phenomenal energy and dedication, his outstanding legal scholarship, his perceptive participation in legal education outside this institution, coupled with his rich experience first as a very prominent and highly respected lawyer, and then as one of the nation's greatest jurists, Judge Rubin has had, and continues to have, a profound impact upon this institution; and,

WHEREAS, in 1987 the LSU Law Alumni Association named Judge Rubin as the first recipient of its Alumnus of the Year award,

NOW, THEREFORE BE IT RESOLVED that the Law Faculty of Louisiana State University recommend to the Board of Supervisors of Louisiana State University that it award Judge Alvin B. Rubin an LL.D. degree honoris causa.

A fellow judge on the U.S. District Court in the Eastern District of Louisiana reminded me that Alvin was the father of the federal magistrate system in our court as we know it today. Alvin was constantly in search of the very best people to be named as magistrates; he urged magistrates to accept broader jurisdiction, urged other judges to give the magistrates more work, and was in the vanguard of fashioning orders, rules and laws, expanding their jurisdiction, and increasing their responsibility. In addition, in our court, he was the driving force in encouraging and showing the way to raise the level of the responsibility and pay for magistrates.

One of Judge Rubin's colleagues remembers that when he first came to the Fifth Circuit in October, 1977, Alvin distributed to that new judge's law clerks a booklet he had prepared on restaurants in New Orleans. He graded the restaurants and kept updating it for years. He and one of his clerks also wrote another booklet describing the duties of law clerks, which was widely used by many judges. A colleague of Alvin also noted that all the law clerks he ever hired always told him they were looking forward to meeting two judges—John Minor Wisdom and Alvin B. Rubin.

I have never been touched so deeply as I have been reading the outpouring of love and respect contained in the letters from Alvin's former law clerks. In some of their letters, they try hard to make sure that I understood that he was not only a judicial and teaching giant, but also a thoughtful, considerate, and caring person.

Alvin treated his secretaries, his law clerks, and his externs as members of his family. Everyone received considerate and fair treatment. He listened to their complaints with sympathy, he went to lunch with them, he invited them to his home for any number of reasons, where they were greeted by Janice and their two sons. On a number of occasions, Janice would house and feed his clerks, who could not find housing right away, until they obtained appropriate accommodations. Many lived to regret it because Alvin was an early riser and anyone staying at his house would not only be awakened early, but would be invited to jog a couple of miles with the judge before breakfast.

Another former clerk recounted his introduction to Judge Rubin. "First is my initial interview with Judge Rubin. It took place at his home on a Saturday. We chatted for a few minutes. . . . He presented me with three hypothetical fact scenarios and asked how I would rule. I did not know that each scenario represented a case then pending before him. The cases were all over my head and my answers were shallow. . . . Between the time Judge Rubin hired me and the time I reported for work, I found out that the three cases we had discussed were now reported decisions. When I read the decisions, I saw that I had wrongly decided two of the three, and that conclusion requires a liberal grading

of my answer to the third hypothet. But the Judge was patient with [his] clerks and the learning experience was unparalleled."

Another example of Alvin's inexhaustible wit was the case in which a defendant in a criminal case was charged with dodging the draft. The government had pressed him hard as had Rubin. One day Alvin received a piece of human excrement wrapped and then put into an envelope addressed to the judge. The letter simply told Judge Rubin that the defendant had taken Judge Rubin's s---t so long, perhaps the judge would enjoy some of defendant's. The defendant eventually pled guilty, and when he appeared before Alvin for sentencing, everyone expected a stern lecture and a heavy sentence. Rubin gave the young man a suspended sentence and then asked him, "Since you have gotten a suspended sentence, do you think you could find a more appropriate receptacle for the feces that you so kindly sent me?"

One of Alvin's law clerks told me a story of Alvin trying to keep himself awake on the bench by doodling. To my knowledge, Alvin was a great doodler. The law clerk went on to say that he used three-by-five cards and multicolored pens. His abstract productions were noteworthy, and many of them have been preserved. The clerk said: "During one particularly tedious trial he was sketching portraits of the jurors. At the end of the trial one of the jurors came up to him and asked, with some pique, why the judge had not sketched *him*!" Another law clerk said that during a particularly stressful case, one of the lawyers asked the judge to excuse him from a particular trial date so that he could ride in the Comus Mardi Gras parade. This clerk expected a stern refusal from the judge but, to the contrary, Judge Rubin said: "Very well, we'll just have to adjourn and come watch you."

Many law clerks learned a great deal by accompanying Judge Rubin during his lunchtime explorations of the French Quarter. Judge Rubin took them to various small and, quality-wise, very mediocre restaurants. Alvin did not believe in taking law clerks to expensive restaurants because he always felt that the clerks were poor and couldn't afford it. Ironically, most of them were probably paid more by their law firms in their first year of practice after clerking than Alvin was paid by the government each year.

Alvin the professor is remembered by one of his law clerks, now a professor himself, who said Alvin was the best teacher he ever had. Alvin had "singlehandedly liberated my writing from the pernicious impact of law school. After I drafted my first opinion for him, Alvin called me in and said 'Peter, this is a thoughtful draft, I agree with it, and I know you wrote it this way because you went to law school. I hired, you, however, because you were also on THE HARVARD CRIMSON. Please rewrite it with that in mind.'"

A lawyer recalls the eight years he practiced with Alvin until Alvin was appointed to the federal bench. "Alvin was meticulous and thorough

in his preparation and practice. He hired a new secretary and, after spending some time with her the morning that she arrived at the office, he dictated to her, in shorthand, from 8:30 A.M. until approximately 2:00 P.M. At 2:00 P.M. she left for lunch, never to return to the office. Of course, his dictation that day was for naught and, understandably, he became upset. Thereafter, he began to use the dictaphone almost exclusively."

All agree that Alvin was a notoriously bad driver. The same lawyer told me:

Further, when I first knew Alvin, he had a very old Plymouth automobile. He consistently forgot to remove the keys from the ignition of the vehicle and the automobile was periodically stolen. Because the car was in such poor shape, it was often times returned to the place from which it was stolen since no one wanted to be seen in the car or to keep it for any length of time. Those of us who were practicing with him, in the office, refused to let him drive us to any meetings since he was always emersed in deep thought and was much more concerned about his thoughts rather than his driving, stop signs or traffic signals, which he periodically ignored. In fact, after Alvin was on the bench (and had moved to New Orleans) he stayed at our home [in Baton Rouge] on occasions. On one such visit, he backed out of the driveway and "wiped out" a large brick post. Upon returning from a trip and seeing the remains of the post in the driveway and front yard, my wife commented, "I see Alvin has been here over the weekend."

When Alvin came to New Orleans in 1966, his family lived in uptown New Orleans where Tulane and Loyola universities were located. His home was close to a bus line which ran downtown through the business section to Canal Street and the Vieux Carre, very close to the old Civil Courts building where we sat. Some people referred to this building as the Wildlife and Fisheries Building because that state agency occupied a portion of the first floor. I am sure many lawyers complained from time to time that there were plenty of wild judges there. For years Alvin rode that Magazine bus back and forth to work. The distance was about five miles and the bus took about forty-five minutes one way. There was no air conditioning so it was not only crowded but also hot, yet he never humored himself by seeking better transportation. Alvin taught in the law school at LSU which was in Baton Rouge, eighty miles away. Once a week, he boarded a Greyhound bus for Baton Rouge and returned the same way that night. One of his students picked him up at the bus depot and then took him back to the bus terminal for the long ride back to New Orleans. During these long rides, he was never without legal documents and his trusty dictaphone.

Once a New Orleans lawyer was in Baton Rouge on business, and he ran into Alvin and Janice. They had been in Baton Rouge visiting friends, and the lawyer asked if he could ride back to New Orleans with them. Alvin was agreeable but he advised the lawyer that the guest would sit in the front seat with Janice, who would drive, and he, Alvin, would sit in the rear seat and work. Alvin did sit in the back seat and read and talked into a dictaphone the entire trip, and did not say two words to the people in the front seat. Alvin did the same thing to Janice and my wife and me when we drove to and from our first Fifth Circuit Judicial Conference in Atlanta, Georgia.

Demonstrating his work ethic and his steadfast drive to discover the law and the facts and to reach a just decision, Alvin persevered under the most difficult circumstances. Alvin was trapped in an elevator between floors for more than an hour and when the doors were finally opened, there was Alvin, sitting cross-legged on the floor of the elevator reading a brief.

When he was engaged in trial, Alvin arranged a system of signals between himself on the bench and his staff in the office. I'm told that there were probably five or six.

One buzz called for law clerk A to come to the Courtroom;
Two buzzes called law clerk B to the Courtroom;
Three buzzes informed someone that the loudspeaker was not on;
Four buzzes was a call for a soft drink or coffee;
Five buzzes informed someone that Alvin had a message to deliver; and,
Six buzzes warned that all hell was breaking loose, and for everyone to abandon the building!

You can imagine what his nimble mind created to confuse, startle and alarm the staff.

Another of his colleagues who practiced before Alvin and is now on the local district court, gives us yet another look at Alvin's love of humor:

Soon after Alvin became a U.S. district judge it was apparent to those of us who did pretty much trial work at the U.S. Courthouse that he liked settlements.

I recall that John Hainkel, Fred Gisevius and I were involved in a tough three-sided case that was headed for trial. The judge wanted it settled. We could not get together. He insisted. The three of us met again. No settlement. Further insistence. Finally, to the satisfaction of none of us (except the judge) it was resolved. Our method of informing the judge was by a cartoon depicting the three of us as totally battered, bruised, worked out and frustrated but cheerfully informing his office that the

matter was—pursuant to his instructions—settled.

He loved it—had it framed and put it on the front page of his newsletter. The art work wasn't much good but it did carry the message. He sent me a copy of it when I became a district judge.

One of Alvin's great loves was the American Bar Association. For over thirty-six years, he served on a dozen or more ABA Committees, often as Chairman. He was on the Board of Editors of the *ABA Journal*; he was a moderator or speaker at meetings of distinguished people assembled to study important legal and social problems. His contributions to the American and Louisiana State Bar Associations, to other legal associations, universities and law schools all across America defy description.

One of his oldest friends began his ABA career with Alvin and has written me about it. He and Alvin registered at a hotel in Boston where they had gone as members of the Junior Bar Conference of the ABA and were selected as circuit delegates on the Young Lawyers Council from their respective federal judicial circuits. Alvin was selected to be the delegate from the Fifth Circuit. Thirty-six years later, in 1989, and immeasurable ABA activities in between, Alvin was named a member of the American Bar Association Task Force on Law Schools and the Profession. It was another and the last distinguished appointment in his career with the ABA.

A friend and fellow member of the Young Lawyers Council with Alvin, who was named a delegate of the District of Columbia Circuit, told me that since their group was so small, Alvin had dubbed them the "Short Circuit." "Our group soon learned that Alvin possessed both an outstanding legal mind and one of the warmest and most engaging personalities we had ever encountered. He was, by all odds, the leading wit of the Young Lawyers Section." Those who came to know Alvin much later in life and who laughed and sometimes suffered through his limericks and poems may be surprised to learn that back in 1955, the Young Lawyers group of the ABA, because of their small numbers, were treated so shabbily (which included their being housed in the less desirable hotels) that Alvin, with Janice's help, composed a little ditty that lamented:

"Oh, we never mention old Philly,
Its rooms were the worst of them all.
We stayed at the Hotel Sylvannia,
T'would have been better to have slept on the Mall."

For the next thirty-four years, Alvin and his distinguished friend continued their work in the ABA.

Alvin's wit endured. After he had been a judge several years, a lawyer in his court was cross-examining the president of a pilot's as-

sociation and the witness began to get angry. The witness suddenly became so angry that he blurted out, "That is none of your f—ing business!" The cross-examiner was delighted and turned his back and tried to control his laughter. When the lawyer turned back to the bench, however, he observed Alvin laughing so hard tears were running from his eyes. Very slowly this stern and demanding judge very gently suggested to the witness that he would have to answer the question. Alvin did not lecture or belittle the witness.

Alvin Rubin also had a much more serious side, which everyone who knew him noted. A former law clerk reminded me of one of Alvin's settlement suggestions that revealed Alvin's compassion and his skill in settling cases. It involved the collision of a huge ocean-going vessel with a Mississippi River ferry boat. It was a hideous accident and many lives were lost. After innumerable settlement conferences, many of the plaintiffs had agreed to settle the case. There were a few holdouts. Alvin privately suggested to the defense counsel that the issue was not money, but the psychological injury to the family members of the deceased accident victims. Alvin urged the defense lawyers to consider erecting a permanent memorial near the site of the accident. The proposal was made and the case was settled. It was a typical Rubin innovation, emerging from the mind of a compassionate Judge.

One of my law clerks wrote that Alvin's most obvious and important quality was his sparkling intelligence. Clerks and lawyers alike stood in awe of him. The clerk ranked sheer hard work next in importance to Alvin's brilliance. He suggested that only a few people outside of those who worked and lived with him were aware of how hard he worked.

This law clerk and others contended that Alvin had another quality which was almost as important as all the others and was also much less known than the others. It was his determination not to take himself too seriously—to banter and joke with his friends, colleagues, clerks, and family, always exhibiting a warm sense of humor.

I received the following from a clerk who worked for Alvin during 1982-1983:

Judge Rubin was not a hard taskmaster. He set an example that was impossible to meet, but one which we strove wholeheartedly to meet, out of love for him, admiration for his dedication, and a desire to see him shine as he deserved. He was always the first person in the office, before 7:00 a.m., even though he went jogging every morning before work. I usually left him in the office in the evening, although I did not leave before 6:00 p.m. Even when he invited us clerks to his home for dinner, we knew that after we left he would spend several more hours of work in his study. Working on opinions with Judge Rubin was a joy because as a draft opinion passed back and forth between clerk and judge, we would find in each of

his revisions fresh embellishments and insights. His example encouraged us to keep digging deeper.

Another clerk commented, "Judge Rubin's legacy to me was his love of the law and of life. He approached both with equal gusto." A certain clerk and others were invited to Judge Rubin's home for a Passover Seder. There were many people of many faiths present, including a Catholic nun. "Judge Rubin presided at the head of the table, resplendent in a white suit and looking like a benign Old Testament patriarch. That evening formed my lifelong view of what ecumenism should be about."

While I am sure he was a deeply religious man, for he practiced and supported his religion, he was so unerringly ethical, he never talked about religion unless I asked him to. He forgave me repeatedly for the number of times I ignored or forgot his religious holidays, special worship times and celebrations.

Yet another clerk talked about the stern Judge Rubin who was determined to get a lawyer to think:

On another occasion the deposition was taken of a plaintiff who had filed a Truth in Lending federal action. During the deposition, it became apparent that all the plaintiff really wanted was to have the dealer repair or take back a car that was evidently a "lemon." The defense attorneys then filed a motion for summary judgment, attaching a portion of the deposition, urging that there was no concern by the plaintiff regarding the alleged Truth in Lending violations. At oral argument, Judge Rubin told defense counsel that the role of an attorney is to fully represent a client, and that plaintiff's counsel had done exactly what was required of him in explaining to the plaintiff that there were possible Truth in Lending violations that could be asserted. Judge Rubin then required the moving defense counsel to write an essay on the role of an attorney in representing his client.

Judge Rubin's judicial colleagues also spoke of him with high regard and respect. One said:

My relationship with Alvin encompasses his career as a lawyer—as a lobbyist (he often appeared before senate committees on behalf of architects/engineers, et al), as a district judge (I practiced before him), and as an appellate judge (I had the privilege of sitting with him on several panels). In every such relationship, he was what every lawyer should strive to be—a true professional. I could always trust his work as a lobbyist, know that he would be the essence of civility when we were on opposite sides as attorneys, be confident of courtesy and fairness when I appeared before him as a judge. I looked forward to the

intellectual stimulation in serving on panels with him on the Fifth Circuit. I try to emulate him, but rarely succeed.

A former great Chief Judge of the U.S. Fifth Circuit who was a nationally recognized expert in admiralty said of Alvin that in that complex field, "Alvin was the outstanding scholar." Alvin had never had a course in admiralty and did not argue a maritime case in practice. In his first year on the bench, realizing that half of the cases being filed in the Eastern District of Louisiana fell into that category, Alvin asked for and was given permission to teach admiralty in the LSU Law School in order to familiarize himself with the subject.

"With Alvin," stated another of his colleagues, "I always knew the agenda. It was the law. He never saw legal rules as manipulable bricks for his own walls. Rather, he thought that law had content, and legal method had meaning. He demonstrated that compassion and a native instinct to pull for the underdog are consistent with a devotion to the rule of law and, indeed, nourish it. So, he was to me a law and order judge. We were judicial colleagues for fifteen years, and my assessment never changed. As George Doane put it in *Life Sculpture*:

He carved the dream on that shapeless stone,
With many a sharp incision;
With heaven's own light the sculpture shone—
He'd caught that angel-vision.

The Texas Law Review dedicated its Volume 70, Number 1, November 1991 Edition to Judge Alvin B. Rubin. One of his colleagues on the U.S. Fifth Circuit Court of Appeals wrote her own brief tribute to Alvin and what she said is so penetrating and insightful, I recommend it to everyone.

Another lawyer friend said:

Because he always came completely prepared, argument before him was a wonderful intellectual exercise because it forced the attorneys to be ready to satisfy Alvin's searching analysis with substantive and logical explanation stripped of overzealous advocacy.

A few years ago I was at a meeting in New York and one of those in attendance reported that he had traveled on the plane with a judge from New Orleans whose name he had forgotten. The only physical description he could give was not identifiable but then he said, "He pulled out a court record and I guess he wanted me to think he was doing his homework but all he did was turn pages." "Now," I said, "I know who you traveled with. That had to be Alvin Rubin. That's the way he reads."

The Rabbi of Congregation B'nai Israel, who presided over the memorial for Judge Rubin on June 15, 1991, said of Alvin: "We are here to

reflect on our overwhelming good fortune to have been touched by his life and his love, his courage and his intellect, and his unbounded zest for life." Just as meaningful was his tribute to Alvin's wife, sons and daughters-in-law, and five grandchildren. As a district judge said at the memorial: "I will, however, take great pleasure in watching David and Michael [Alvin's two sons], for in them the fruit has not fallen far from the tree." Judge Stagg had attended the Louisiana Bar Convention on a recent date. He said: "There on successive mornings on the [Bar] program one had only to look at the first hour on the first day and it was David Rubin who was speaking and on the second hour of the second morning it was Michael Rubin who was speaking. Teaching and speaking in the manner and in the fashion of their father."

One of Alvin's close friends walked through the City of Baton Rouge with Alvin during his last few weeks. Alvin spoke of his love of Janice, forty-five years of love and respect. The friend says Alvin also talked about his life: his very modest beginnings, his teachers, his devotion to Judaism and his faith in God, his military service, and his love of his country.

When Alvin and Janice went to Houston, Texas for Alvin's monthly chemotherapy, certain friends of Alvin became dear friends. One friend was a distinguished lawyer, and he and his wife began having dinner with Alvin and Janice on those visits. The lawyer relates that he:

went to the first dinner thinking that it was a kindness. One measure of Judge Rubin is that he made those dinners a pleasure to which Macey and I looked forward each month. They were filled with humor, brilliant conversation, stimulating ideas, and the rare insights that make one take a different perspective on familiar subjects. There was never a trace of self-pity or complaint. In going through the ordeal of chemotherapy and dealing with cancer, Judge Rubin and Janice gave Macey and me memories as warm and gracious as any we have. To say to be able to give such a gift in such circumstances is rare is an understatement.

During Alvin's last few months when the ravages of his illness had sapped his energy and his strength, he agreed to work on a video project entitled, "The Effective Ethical Advocate." This work was co-sponsored by the Texas Center for Legal Ethics and Professionalism and the Texas Tech School of Law. The Dean of the Texas Tech Law School related this to me concerning the undertaking. "This project involved capturing the wisdom and insight of Judge Rubin and Judge [Tom] Reavley [U.S. Fifth Circuit Judge] as to the relationship between ethical behavior and effective advocacy for lawyers." The program was divided into pre-trial activities, trial activities, and appellate activities.

At the time that Judge Rubin and his wife Janice came to Lubbock, they both knew that there was nothing to be done

to stay the course of his cancer. Indeed, Judge Rubin was suffering from considerable pain during his visit. Despite the specter of his inevitable and proximate death, Judge Rubin was an enthusiastic participant in the completion of the video project. In fact, Judge Rubin became the strength of the project. He exuded a quiet dignity and gentleness of spirit which was focused on the students and practicing attorneys who helped in the production of each video. The thoughtfulness of his approach to law and ethics was evident in the structure he provided for the sessions and the insight which he provided for posterity through these videos.

What the videos can never show is the source of much of his strength. All who were present during the execution of this project became aware of the special relationship between Judge Rubin and his wife Janice. It is clear that Judge Rubin and Janice were not just husband and wife, they were best friends. Janice Rubin is a person of great character and ability in her own right. Together they were a formidable force built on a foundation which multiplied the strengths of each. Both Judge Rubin and Janice demonstrated the ability to truly care about others. Judge Rubin cared about the law as crafted by courts, the students he taught at the Law Center at Louisiana State University, and he cared about sharing his special affection for law and the legal process with all his colleagues in the bar.

Lately it has been popular to question professionalism and the practice of law. Judge Rubin's life and influence stand as a strong bulwark against the erosion of professionalism of the highest kind.

Of course, we could all write a book about the magnificent Janice. I feel constrained to relate one of my family's early encounters with this wonderful woman. My wife Muriel and I became ill, she with flu and I with pneumonia. Daily, for days and days, Janice delivered food in great quantities. It filled our refrigerator and freezers *and* the refrigerators and freezers of several friends; she simply would not stop until she was certain that we were both out of danger and back on our feet.

Another of Judge Rubin's law clerks began work for him in February, 1991, a short time before Alvin passed away. He said, "From our initial meeting to one final encounter on his last day of work on the Wednesday before his death, despite his often discomfort with the effects of his illness, Judge Rubin was an ever patient teacher."

"Judge Rubin frequently coupled his analysis and discussion of ongoing cases with references to equity and justice. Although he admonished me on the first day that he believed in the 'Rule of Law' regardless of his personal agreement with the rule, he also said that we must never lose sight of a court's function to apply those rules of law in order to

achieve justice." Even the Tuesday prior to his last day at work, Judge Rubin placed a page from U.S. Law Week in this clerk's basket, directing his attention to a recent dissenting opinion by Justice Scalia that addressed issues of constitutional interpretation.

One of his former law clerks wrote Judge Rubin a letter when he first learned the judge had cancer. It tells a lot about what most of his clerks and most others thought of him.

I learned everything worth knowing about being a lawyer, a public servant, a citizen, a member of a community, and a mature human being from Judge Rubin. A lawyer, to me, is someone who shares Judge Rubin's commitment to quality, attention to detail, insistence on integrity, and love of literacy and learning. A judge is someone who shares Judge Rubin's openness to understanding other points of view, his compassion for those without power or status, and his commitment to the rule of law. A fully developed human being is someone who shares Judge Rubin's dedication to selfless service, his devotion to teaching others, his unfailing love for everyone who came into the circle of his life, and his constant and unobtrusive helpfulness.

Another former law clerk capably summarized Judge Rubin's impact on the lives of those who were fortunate enough to know him well:

But what I really want to say, Judge, is how much I learned from you. Not about law, about life.

I am grateful to you for having shown me that fairness is not the same as weakness, generosity, or self-effacement. It takes determination, toughness, and even stubbornness, to be fair. That is the lesson I think of first when I think of you.

There are so many others that flood my mind. In our year together, you motivated and supervised five people without one critical or sharp word. That is extraordinary. You exerted great influence over oral argument by sending in questions to counsel. I learned, therefore, that substantial power comes from being better and sooner prepared. I also learned a lot about tact from your use of procedural arguments when other judges might not have shared your substantive views.

You are relaxed and always have time for the people and activities you care for, but you get more work done than any singleminded overstressed New Yorker I've ever known. You never put off writing that first draft because it may not come out right. At times it doesn't, but the final draft never reveals it and is done all the more promptly because you didn't impose a prematurely high standard. You treat others of any race, age or class with sincere respect, without bias or pretention, but

you still see clearly their faults, expect from them integrity and competence, and grade attorneys at oral argument strictly from the bench. Judge, you are a wonderful man, and a year at your side is all anyone could ever want as an ethics curriculum. Ethical conduct is taught not by texts, but by example. And in my 22 years of school and 32 years of life I have known no other example like yours.

We know better than most that statutes and precedents do not by themselves give the just resolution of any case. Justice is not a science answerable by deduction or the correct application of some formula. The rendering of justice comes from the sense of justice in a man's mind. The magic of your opinions, and the immeasurable good they have done in this world, comes straight from the magic and goodness of your character and mind. They are just, honest, articulate, poetic, and insightful, because you are. Like Plato's cave, your writings only reflect as a shadow the purer beauty of your soul.

Few men have cast so many, so beautiful, and so powerful shadows.

APPENDIX

Grateful appreciation and acknowledgment to these and to all who have contributed material for the realization of this article:

United States Court of Appeals, Fifth Circuit

Honorable W. Eugene Davis, Circuit Judge
Honorable John M. Duhe Jr., Circuit Judge
Honorable Reynaldo G. Garza, U.S. Senior Circuit Judge
Honorable Thomas Gibbs Gee, Former Circuit Judge
Honorable Patrick E. Higginbotham, Circuit Judge
Honorable Edith H. Jones, Circuit Judge
Honorable Carolyn Dineen King, Circuit Judge
Honorable Thomas M. Reavley, Circuit Judge
Honorable Homer Thornberry, Circuit Judge
Honorable John Minor Wisdom, U.S. Senior Circuit Judge

*United States District Court**Western District of Louisiana*

Honorable Edwin F. Hunter, Jr., Senior Judge
Honorable F.A. Little, Jr., District Judge
Honorable Richard J. Putnam, Senior Judge
Honorable John M. Shaw, Chief Judge

*United States District Court**Eastern District of Louisiana*

Honorable Peter Beer, District Judge
Honorable Adrian G. Duplantier, District Judge
Honorable Martin L. C. Feldman, District Judge
Honorable Henry A. Mentz, Jr., District Judge
Honorable Morey L. Sear, District Judge

Canada

Honorable Claire L'Heureux-Dube, Justice, Supreme Court of Canada

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Alvin's and Other Judges' Former Law Clerks

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